

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES of AMERICA,

4 -against-

19 Cr. 324 (NSR)
Sentence

5 PHILLIP HESTER,

6 Defendant.
7 -----x

8
9 United States Courthouse
10 White Plains, New York

11 November 19, 2020

12
13 THE HONORABLE NELSON S. ROMAN,
14 United States District Judge

15
16
17 AUDREY STRAUSS

Acting United States Attorney for
the Southern District of New York

18 BY: COURTNEY HEAVEY

19 Assistant United States Attorney

20
21 LAW OFFICES OF JESSE HOBERMAN-KELLY

Attorneys for Phillip Hester

22 BY: JESSE I. HOBERMAN-KELLY

1 THE DEPUTY CLERK: Docket number 19, 1-9, CR324,
2 United States of America versus Phillip Hester.

3 Would counsel please state their appearance for the
4 record, beginning with the government.

5 MS. HEAVEY: Good morning, your Honor. Courtney
6 Heavey for the government.

7 THE COURT: Good morning.

8 MR. HOBERMAN-KELLY: Good morning, your Honor. Good
9 morning everyone. Jesse Hoberman-Kelly for Mr. Hester.

10 THE COURT: Good morning to you, counselor, and to
11 your client, Mr. Hester.

12 This is a proceeding in the matter of the United
13 States v. Phillip Hester, Docket 19CR324, and it's intended to
14 be the sentencing of the defendant. I have reviewed the
15 revised presentence investigation report filed October 20,
16 2020, which was prepared in connection with today's sentencing
17 of Mr. Hester. The government's submission dated November 12,
18 2020, and the defendant's submission dated November 9, 2020,
19 and November 11, 2020.

20 Has the government reviewed the presentence report?

21 MS. HEAVEY: Yes, your Honor.

22 THE COURT: And does the government have any
23 objections to the presentence report?

24 MS. HEAVEY: No, your Honor.

25 THE COURT: All right. Mr. Kelly, have you had an

1 opportunity to review the presentence report?

2 MR. HOBERMAN-KELLY: Yes, I have, your Honor.

3 THE COURT: And have you had an opportunity to
4 discuss it with your client, Mr. Hester?

5 MR. HOBERMAN-KELLY: Yes, I have.

6 THE COURT: Do you have any objections that you'd
7 like to raise on behalf of your client with respect to the
8 report?

9 MR. HOBERMAN-KELLY: Not at this time.

10 THE COURT: Mr. Hester, I understand you've had an
11 opportunity to read and review the presentence report; is that
12 correct?

13 THE DEFENDANT: Yes.

14 THE COURT: And did you discuss it with your
15 attorney?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. The superseding indictment
18 charges that the defendant, Mr. Hester -- charges Mr. Hester
19 with one count of knowingly possessing a firearm while he
20 was -- while he had previously been convicted of a crime
21 punishable by imprisonment for a term exceeding one year in
22 violation of 18 U.S.C. Section 922(g)(1), and one count of
23 knowingly and corruptly altering, destroying, mutilating, and
24 concealing records, documents, and other objects with the
25 intent impair the objects' integrity and availability for use

1 in an official proceeding, and otherwise obstructing,
2 influencing, and impeding an official proceeding, in violation
3 of 18 U.S.C. Section 1512(c).

4 On August 11, 2020, the defendant pled -- rather
5 entered a guilty plea to Count One of the superseding
6 indictment.

7 Ms. Heavy, does the government have any comments or
8 motions for the Court's consideration before I impose a
9 sentence upon the defendant?

10 MS. HEAVEY: No, your Honor. I mean, we would
11 eventually move to dismiss the open count, Count Two.

12 THE COURT: Okay, any comments that you'd like to
13 make with respect to sentencing?

14 MS. HEAVEY: Briefly, your Honor. The government, as
15 set forth in further detail in the Government's submission, the
16 government seeks a guideline sentence here. Primarily, one of
17 the main factors here is the nature and circumstances of this
18 offense. As detailed in the government's report, this offense
19 occurred because the defendant chose to confront a high school
20 student who had gotten into a dispute with his girlfriend
21 earlier. The offense involved the defendant possessing a
22 loaded firearm after the conviction of a prior felony which
23 included, similarly included criminal possession of a weapon.
24 He also had a recent conviction for assault, and in fact the
25 defendant committed this offense while he was on probation in

1 connection with the criminal possession of a weapon.

2 The seriousness of the offense is further reflected
3 in the fact that he not only possessed the loaded firearm in
4 connection with a fight but that it all took place outside of a
5 housing complex where people were walking around in their
6 homes, and therefore there was a safety risk here.

7 There's also a need to promote respect for the law.
8 The defendant's conduct here has demonstrated a serious
9 disrespect for the law that necessitates a serious sentence of
10 imprisonment.

11 First is the fact, as I've previously mentioned, that
12 he committed this offense despite having previously committed
13 and been recently convicted of a similar firearms possession.
14 Indeed, being on probation at the time of the offense evidences
15 a clear disrespect for the law.

16 Second is the obstruction of justice that in
17 connection with this offense that is further troubling evidence
18 of his disregard for the law and the legal process. Here, the
19 defendant twice instructed his girlfriend to delete
20 incriminating evidence on his iCloud account that was connected
21 to his phone so that the government would not be able to access
22 it, laughed about it, and ultimately his instructions led to
23 the phone being remotely wiped of its data by the time law
24 enforcement was able to access and unlock it.

25 Finally, there's a need for specific deterrence. As

1 previously mentioned, the defendant's prior convictions clearly
2 did not sufficiently deter him from engaging in similar conduct
3 here, and there's also a need for general deterrence to send
4 the message that possessing a loaded firearm after a conviction
5 of a felony is a serious offense and becomes all the more
6 serious for defendants that choose to engage in obstruction of
7 justice thereafter.

8 THE COURT: All right. Thank you counsel.

9 Mr. Hoberman-Kelly, do you have any comments you'd
10 like to make on behalf of your client before I impose a
11 sentence?

12 MR. HOBERMAN-KELLY: I do, very briefly, your Honor.
13 I also note that Mr. Hester has been working on drafting a
14 statement to make to your Honor. He's been spending a lot of
15 time on it and working on making that, so would you prefer him
16 to go or me to go first?

17 THE COURT: All right. You go first, and then I'll
18 allow your client to have an opportunity to address the Court.

19 MR. HOBERMAN-KELLY: Thank you very much, your Honor.

20 Mr. Hester has learned from his mistakes. Over the
21 last year, almost two, that I have had the privilege to know
22 Mr. Hester -- would you like me to rise, your Honor?

23 THE COURT: No, no.

24 MR. HOBERMAN-KELLY: Sorry, I'm unclear on the COVID
25 protocol. Over two last two years that I've had the privilege

1 to know Mr. Hester, I've observed substantial growth in his
2 ability to take responsibility for his situation and to see the
3 possibility of a positive future for himself.

4 The custody situation has given Mr. Hester no
5 opportunity to take advantage of classes and programs which
6 could further help him on his journey to becoming a fuller,
7 more responsible adult. If the Court requires further
8 in-custody time, it is respectfully requested Mr. Hester be
9 sent to a facility with substantial educational opportunities
10 as Mr. Hester is anxious to resume his attempts to build a
11 career and become a productive member of his community.

12 The pandemic has made the past nine months extremely
13 difficult for all who are incarcerated, and certainly
14 Mr. Hester is no exception. It is respectfully requested that
15 the extremely limited, no family visits, harsh conditions, the
16 pandemic has required be taken into consideration when
17 determining Mr. Hester's sentence.

18 Mr. Hester's family and community needs him. As the
19 many letters of support show, Mr. Hester is a vital member of
20 his community supporting this large, diverse family and helping
21 whenever he can be of service.

22 Finally, no matter the outcome here today, this will
23 be Mr. Hester's last go-round with the criminal justice system.
24 He was quite young when he began to get into trouble. He is
25 still young but maturing quickly, a maturity that is allowing

1 him to look back at his past mistakes, take full responsibility
2 for his bad decisions, and learn from them so as not to make
3 them again in the future. Personally observing this growth and
4 his desperate desire to become a productive family man in his
5 community, I have seen a young man who has learned the required
6 lessons from this and other past bad decisions and will have
7 the fortitude to make good, law-abiding decisions in the
8 future.

9 As outlined in our sentencing memo, it is
10 respectfully requested that Mr. Hester be sentenced to 20
11 months, close to time served, with a period of supervised
12 release to follow his release from custody.

13 As I'm sure we all are aware, the pandemic appears to
14 be ramping up once again, and the harsh and limiting
15 conditions, no family visits, no recreational time, no
16 educational or supportive programming, the lack of proper
17 medical care, will continue for many more months to come.

18 If the Court has any questions regarding defense's
19 memo, I'd be happy to delve into any of the specific concerns
20 the Court may have.

21 Thank you very much for your consideration.

22 THE COURT: Thank you, counselor. I don't have any
23 questions for you.

24 Mr. Hester, is there anything that you'd like to say
25 on your own behalf before the Court imposes a sentence upon

1 you?

2 THE DEFENDANT: Yes. Your Honor, I've never had to
3 write something down to speak on my own behalf, so I'm not sure
4 where to start. I don't want to feed some sob story in hopes
5 of you giving me a break. I much rather tell you that I know I
6 did something wrong and that's why I'm in this situation now.

7 Even though I did my wrongs that led me to this
8 point, in that moment I felt as if I was right. In the moment
9 I got shot, I was very upset, angry, and I wasn't thinking
10 right. So instead of calling an ambulance, I reacted off
11 impulse and called someone I thought was a friend and got a
12 gun.

13 Being in jail these past 19 months, I was up many
14 nights playing the same situation in my head, but I had many
15 different outcomes to it, and some were negative for a while,
16 but I'm not going to lie, but I really started to think as well
17 as mature. I realize I shouldn't have called someone for a
18 weapon, and I shouldn't have been in a place or a situation
19 where I would need one.

20 Looking back, I could have easily died. Realizing
21 that has me viewing life and everything in a different
22 perspective. I saw the judge to get arraigned on this case on
23 my birthday just turning 20 years old the day before I got
24 shot, and now I'm sitting in court with a bullet in my leg all
25 because of an argument and bad decisions I make.

1 I'm 21 going to 22 now. Believe it or not, I matured
2 and learned a lot not just from sitting in jail but from all my
3 life experiences. I've also learned from others. My dad used
4 to tell me every action causes a reaction, which in return
5 causes consequences, whether that be negative or positive.

6 Since being in jail, a lot's been going on with my
7 family and me personally. Two of my oldest sisters had a baby
8 I haven't met and one is pregnant again. Some of my family has
9 passed as well. I missed out on my long time girlfriend's
10 graduation. Also my parents are getting older and need help
11 because they can't do everything they used to. To some people
12 that might seem normal, but to me it weighs on my mental a lot,
13 and I get frustrated over simple things like not being able to
14 help my mom do her floors. She raised me when she didn't have
15 to and was always there for me when I needed her. So why can't
16 I be there for her and those who was there for me? Any mistake
17 I make, I'm getting older, I can't keep doing the adolescent
18 things I was doing. It's taken from my freedom as well as my
19 future. It's time I grew up and start preparing for my future
20 so one day I could have my own family. Since COVID-19, the
21 whole world been affected in many ways.

22 I'm asking you to help me. I don't want to get lost
23 in this world or in prison. I'm still young and have my whole
24 life ahead of me. I don't need jail, I need guidance and help.
25 If I walk out today, the first thing I would do is fill out job

1 applications as well as see if my probation officer can help me
2 get into an apprenticeship program so I could learn a trade. I
3 would save up money and try to get back where I left with my
4 handyman business I was trying to start.

5 I know I could be successful. All I had to do was
6 cut off the bad people I had in my life and look to my family
7 for support, change the places I used to hang out at and
8 minimize the idle time by doing things productive.

9 If I could get home confinement or some type of
10 supervision instead of going to prison, not only will I make
11 you a believer as well as proud, but more importantly my family
12 and everyone who ever doubted I was going to be something, and
13 I'm determined to do that no matter the outcome of this
14 setback, no matter what I get sentenced, I have to own up to my
15 mistakes and humbly take this sentence you find fit for the
16 crime I committed.

17 Thank you.

18 THE COURT: You're 21 years old, Mr. Hester?

19 THE DEFENDANT: Yes.

20 THE COURT: This is your second felony conviction.

21 THE DEFENDANT: Yes.

22 THE COURT: The trajectory that you're heading in if
23 you continue this path is going to put you in a place where
24 you're going to wind up spending the majority of your adult
25 life in prison.

1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: There are far too many young men,
4 especially young men of color, appearing before me who are
5 spending more time in prison than they're spending out of
6 prison, and that's the direction that you're heading right now.

7 It's a pretty sad commentary. No? You agree with
8 that?

9 THE DEFENDANT: I agree with you, your Honor.

10 THE COURT: Twenty-one years old you already have two
11 felony convictions. The third one and you're going to be
12 spending a long, long time in prison. And I can assure you
13 that no judge is going to give you a break on your third felony
14 conviction. They're going to send you away for the maximum
15 amount of time.

16 What I find most troubling is that both felony
17 convictions involve guns. That's a scary thought that someone
18 young like you would be out there with a loaded gun and would
19 not hesitate to fire that gun. My understanding of the facts
20 is that the only reason why you didn't fire the gun -- or you
21 did attempt to fire the gun and it jammed. That's scary. It's
22 scary for people that live in the communities that have
23 children.

24 You spoke about having your own family, right?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Imagine living in a community where there
2 are people, young people in possession of firearms willing to
3 fire that firearm in public or in an isolated area. Imagine
4 the danger that that creates for that family.

5 That's something you want for your family?

6 THE DEFENDANT: Not at all.

7 THE COURT: You have to change the way you're living.
8 You have to change how you handle conflict. If you don't
9 change that, I can assure you that you're likely to wind up
10 appearing before me again having committed a much more serious
11 crime. And as a result, myself as a judge, would have no
12 recourse but to sentence you to a very, very long prison term.
13 I don't think that's what you want. I really don't. And if
14 you don't change right now, that's where you're heading.

15 The sad part is that if that's the direction you're
16 going, not only are you going to suffer because you're going to
17 spend a lot of time in prison, but your family is going to
18 suffer. You talked about wanting to help your mother or
19 wanting to help your family. If you're in prison, believe it
20 or not, you're not in a position to help. And whether you know
21 it or not, your family is doing time with you.

22 Now I've never spent time in prison. I've visited a
23 number of correctional facilities. They're dark. They're
24 dreary. It's sad just to visit them. So I can only imagine
25 how difficult it is to do time in prison. But it seems like if

1 you don't change course, it seems like you're going to be
2 spending more time in prison. That's a sad commentary.

3 Twenty-one years old, two felony convictions. All
4 right. And the next time that you commit, I can assure you,
5 you will be spending more time in prison than you will have
6 spent outside of prison. And the question is whether or not
7 you just want to become another statistic or whether or not you
8 want to change course.

9 I know that your dad is there, your girlfriend's
10 there, but the effort can't just come from them. It's not
11 enough that they say, hey, what you're doing is wrong, you've
12 got to stay out of trouble. It's got to come from you. You've
13 got to be the one that wants to change. All right?

14 THE DEFENDANT: Yes.

15 THE COURT: You need to change course, otherwise
16 you're just going to become another statistic, and I can assure
17 you you're going to be like those statistics we wind up sending
18 young men to prison where they're just warehoused. And the
19 question is whether or not you want to be warehoused like all
20 the others that are in prison right now.

21 From what I understand, prison has its own culture,
22 right? You've got to eat when they tell you, you've got to
23 wake up when they tell you, you've got to eat when they tell
24 you. Whatever it is that they serve you, you've got to eat.
25 You have no independence. You've got to have eyes in the back

1 of your head. The guy on the left and the guy on the right you
2 don't know if they're going to go off on you or something
3 stupid or someone else that's behind you. That's the
4 environment you put yourself in, and that's the environment
5 that you're going to live with if you continue down this
6 course. You need to make a change, but it's got to come first
7 and foremost from you.

8 In accordance with the decision by the Supreme Court
9 in *United States versus Booker*, while the United States
10 sentencing guidelines are not mandatory, this Court nonetheless
11 must consult those guidelines and take them into account when
12 sentencing. Therefore, this Court has considered the findings
13 of fact stated in the presentence report, as well as the
14 guidelines analysis and recommendations contained therein. The
15 Court has weighed this information along with the factors
16 listed in 18 U.S.C. Section 3553(a) in coming to its final
17 sentencing decision.

18 The Court adopts the factual recitation in the
19 presentence report. The presentence investigation report
20 includes a computation that Mr. Hester's offense level amounts
21 to 19 and his criminal history falls into Category III. The
22 guideline sentence for that offense level and criminal history
23 category listed in the presentence report is 37 to 46 months
24 imprisonment followed by three -- I'm sorry, followed by one to
25 three years of supervised release. In addition, the applicable

1 fine range is 10,000 to \$100,000.

2 Mr. Hester, you've been found guilty of one count of
3 being a felon in possession of a firearm in violation 18 U.S.C.
4 Section 922(g) (1) .

5 The Probation Office has recommended that the Court
6 impose a sentence of 37 months of incarceration followed by
7 three years of supervised release. The Probation Office noted
8 that for this offense you must pay a special assessment of \$100
9 in accordance with 18 U.S.C. Section 3013. The Probation
10 Office has recommended no fine be imposed and restitution and
11 forfeiture not be imposed in this matter.

12 Subsection (a) (1) of 18 U.S.C. Section 3553 requires
13 that the Court take into consideration the nature and the
14 circumstances of the offense and the history and
15 characteristics of the defendant. Subsection (a) (2) of 18
16 U.S.C. Section 3553 requires that the Court consider the need
17 for the sentence to promote certain objectives of the criminal
18 justice system, namely; punishment, specific and general
19 deterrence and rehabilitation. The Court must also consider
20 the kinds of sentences available, the sentencing guidelines,
21 the pertinent policy statements, the need to avoid unwarranted
22 sentencing disparities, and the need to provide restitution to
23 victims.

24 I have considered the arguments made by both sides
25 and the information provided by the parties, including

1 Mr. Hester's acceptance of responsibility for his actions and
2 the nature and circumstances of this crime, his prior criminal
3 history, his history and characteristics, and the seriousness
4 of the crime.

5 Taking into account the nature and circumstances of
6 the offense and the history and characteristics of the
7 defendant, the Court finds that a sentence of 26 months to be
8 followed by a term of three years of supervised release is
9 reasonable and appropriate in that such terms are sufficient
10 but not greater than necessary to promote the proper objectives
11 of sentencing.

12 In addition, the defendant is ordered to pay to the
13 United States a mandatory \$100, which shall be due immediately.

14 Finally, based on the presentence report's
15 recommendation, I will not impose a fine.

16 Mr. Hester, upon your release from custody, you shall
17 be placed on supervised release for a period of three years.
18 During your term of supervised release, you must comply with
19 the standard conditions of supervision, as well as the
20 following mandatory conditions of supervision:

21 One, you must not commit another federal, state, or
22 local crime;

23 Two, you must not unlawfully possess a controlled
24 substance;

25 Three, you must cooperate in the collection of DNA as

1 directed by the probation officer;

2 Four, you must refrain from any unlawful use of a
3 controlled substance. You must submit to one drug test within
4 15 days of release from imprisonment, and at least two periodic
5 drug tests thereafter, as determined by the Court; and

6 Five, you must comply with the standard conditions
7 that have been adopted by this Court as well as with any other
8 conditions.

9 Mr. Hester, you must also obey the following special
10 conditions while on supervised release:

11 One, you must participate in an outpatient treatment
12 program approved by the United States Probation Office which
13 program may include testing to determine whether you
14 reverted -- you have reverted to using drugs or alcohol. You
15 must contribute to the cost of services rendered based on your
16 ability to pay and availability of third-party payment. The
17 Court authorizes the release of available drug treatment
18 evaluations and reports, including the presentence
19 investigation report to the substance abuse treatment provider;

20 Two, you must participate in an outpatient, mental
21 health treatment program approved by the United States
22 Probation Office. You must continue to take any prescribed
23 medication unless otherwise instructed by the healthcare
24 provider. You must contribute to the cost of services rendered
25 based on your ability to pay and availability of third-party

1 payment. The Court authorizes the release of available
2 psychological and psychiatric evaluations and reports,
3 including the presentence investigation report, to the
4 healthcare provider; and

5 Three, you must submit your person, and any property,
6 residence, vehicle, papers, computer, and any other electronic
7 communications and storage devices and effects to search by the
8 United States Probation Officer, and if needed with the
9 assistance of any law enforcement officer. The search is to be
10 conducted when there is reasonable suspicion concerning a
11 violation of the conditions of your supervision or unlawful
12 conduct by you, the supervisee. Failure to submit to search
13 may be grounds for revocation of release. You shall warn any
14 of the occupants that the premises may be subject to searches
15 pursuant to this condition. Any search shall be conducted at a
16 reasonable time and in a reasonable manner.

17 Mr. Hester, do you understand each and every one of
18 these conditions?

19 THE DEFENDANT: Yes.

20 THE COURT: Upon your release from custody, you must
21 report to the nearest Probation Office within 72 hours. The
22 Court recommends you be supervised by the district of
23 residence.

24 The sentence as stated is imposed.

25 Mr. Hester, you have the right to appeal your

1 sentence. Any notice of appeal must be filed within 14 days
2 after the entry of judgment. So if you wish to appeal, you
3 must advise your attorney to prepare and file a notice of
4 appeal immediately. If you are unable to pay the cost of an
5 appeal, you have the right to apply for leave to appeal *in*
6 *forma pauperis*, meaning as a poor person. If you make such a
7 request, the Clerk of the Court must immediately prepare and
8 file a notice services appeal on your behalf.

9 Do you understand your right to appeal to the extent
10 that it may exist?

11 THE DEFENDANT: Yes.

12 THE COURT: Are there any remaining counts or
13 underlying information that need to be dismissed or addressed
14 at this time?

15 MS. HEAVEY: The government would move to dismiss
16 Count Two.

17 THE COURT: Okay. I take it there's no opposition to
18 the application. It's granted.

19 Counselor, do you want the Court to make any
20 recommendation with respect to any placement that may occur by
21 the Bureau of Prisons?

22 MR. HOBERMAN-KELLY: I would request he be
23 transferred to federal custody, if it's possible someplace
24 close for his family and someplace that has services he can
25 take advantage services.

1 THE COURT: Okay. What county is his family
2 residing?

3 MR. HOBERMAN-KELLY: He resides in Peekskill, your
4 Honor, which is in Westchester.

5 THE COURT: Okay. Someplace close to Peekskill so
6 his family can visit.

7 What type services, mental health and treatment?

8 MR. HOBERMAN-KELLY: Career-oriented services. Trade
9 services I think would be most appropriate for him.

10 THE COURT: I'll make those recommendations.

11 MR. HOBERMAN-KELLY: Thank you, your Honor.

12 THE COURT: Anything further?

13 MS. HEAVEY: Nothing from the government, your Honor.
14 Thank you.

15 MR. HOBERMAN-KELLY: Nothing from defense, your
16 Honor.

17 THE COURT: Mr. Hester, it's my sincere hope you
18 don't have to ever appear before me again under these
19 circumstances.

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: You need to know your next appearance
22 before a judge on a criminal matter may wind up sending you to
23 prison for a very, very long time. You don't want that. Make
24 the best services the situation, and I hope that you change
25 course. Good luck.

1 THE DEFENDANT: Thank you.

2 THE DEPUTY CLERK: Court in recess.

3 (Proceedings concluded)

4 CERTIFICATE: I hereby certify that the foregoing is a true and
5 accurate transcript, to the best of my skill and ability, from
my stenographic notes of this proceeding.

6 -----
Angela A. O'Donnell, RPR, Official Court Reporter, USDC, SDNY

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25